

UNITED STATES
DEPARTMENT OF COMMERCE

SUMMARY OF ETHICS
RULES
FOR THE
U.S. COMMERCIAL SERVICE

INTERNATIONAL TRADE
ADMINISTRATION
2009



UNITED STATES
DEPARTMENT OF COMMERCE
Ethics Law and Programs Division
Office of the Assistant General Counsel
for Administration
202-482-5384 – ethicsdivision@doc.gov
www.ogc.doc.gov/ethics.html

PUBLIC SERVICE IS A PUBLIC TRUST

As a U.S. and Foreign Commercial Service (US&FCS) employee of the International Trade Administration (ITA), you have been placed in a position of trust and are held to a high standard of ethical conduct. This handout contains a summary of the rules set forth in conflict of interest statutes, the *Standards of Ethical Conduct for Employees of the Executive Branch*, and the Foreign Affairs Manual. You should retain this handout for use as a reference source.

If you have any question about ethic rules, contact the Ethics Law and Programs Division of the Office of the Assistant General Counsel for Administration, U.S. Department of Commerce, at 202-482-5384 or ethicsdivision@doc.gov.

Designated Agency Ethics Official:
Barbara S. Fredericks, Assistant General Counsel for Administration

Alternate Designated Agency Ethics Official:
David Maggi, Chief, Ethics Law and Programs Division

Office of the Assistant General Counsel for Administration

To obtain legal advice regarding other administrative law issues, call the:

Employment and Labor Law Division at 202-482-5017 – for advice regarding personnel law and labor law issues

General Law Division at 202-482-5391 – for advice regarding appropriations laws and laws regarding the release of information, conduct of advisory committee meetings, and general administrative law issues.

Office of Inspector General – The Ethics Law and Programs Division provides advice but does not investigate allegations of violations of law. To report fraud, waste, abuse, or other violations of law, or to request an investigation, call the Office of Inspector General Hotline at 800-424-5197 or 202-482-2495 or email hotline@oig.doc.gov.

FINANCIAL CONFLICTS OF INTEREST

Financial Conflicts of Interest. You may not, as part of your Government duties, participate in any matter that will affect your personal financial interests, unless an exemption applies or you have received a conflict of interest waiver. Furthermore, the financial interests of some persons are considered so intertwined with your own that they are attributed to you for purposes of determining conflicts of interest and you are barred from participating in matters affecting their financial interests. These include the financial interests of your spouse, minor children, household members, general partners, and non-Federal employers; persons with whom you are seeking employment; and entities for which you serve as an officer or director.

Exemptions. Exemptions permit you to participate in matters affecting a financial interest if the financial interest is a:

- holding in a U.S.-registered diversified mutual fund;
- holding in a U.S.-registered industry sector-specific mutual fund or geographic sector-specific mutual fund valued at US\$50,000 or less (if all interests in sector-specific funds that invest in the same sector total US\$50,000 or less);
- publicly-traded stock or bond holding of US\$15,000 or less in a U.S. company if the company is a party to a matter (or US\$25,000 or less if the company is not a party to a matter) with regard to a specific-party matter; or
- publicly-traded stock or bond holding of US\$25,000 or less in a U.S. company with regard to a broad policy matter (if total holdings in the industry or group affected by the matter are US\$50,000 or less).

Waivers. If you serve overseas, you may obtain a waiver for interests that meet certain criteria, such as are US\$50,000 or less. Contact the Ethics Law and Programs Division at 202-482-5384 to obtain such a waiver.

Special Rules for U.S. Citizens Overseas. If you are a U.S. citizen serving overseas (and were not hired locally), you and your spouse and family may not invest in stocks or bonds issued by a company headquartered in your country of assignment (or that does a substantial portion of its business there); mutual funds with a policy of concentrating investments in companies in that country; and real estate in that country (other than a personal residence or retirement property, if approved by the Chief of Mission).

<p style="text-align: center;">APPEARANCES OF BIAS (NON-FINANCIAL CONFLICTS OF INTEREST)</p>

Appearances of Impropriety concerning Matters Affecting Relatives and Associates.

Unless you receive specific authorization, you may not participate in a matter as a Commercial Service employee if one of the parties to the matter is (or is represented by) a person with whom you have close family or business ties (a “covered relationship”) and if your participation would create an appearance of loss of impartiality. Persons with whom you are considered to have a “covered relationship” include:

- persons with whom you have or are seeking a business or financial relationship (other than a routine consumer transaction);
- members of your household;
- close relatives;
- employers and clients of your parents, dependent children, and spouse (and their prospective employers and clients);
- former non-Federal employers and clients, for a one-year period (or a two-year period if you received an extraordinary severance payment from the former employer before entering U.S. Government service); and
- organizations in which you are an active participant (other than political organizations).

In addition, if you are a political appointee and served as a registered lobbyist at any point in the two-year period before your appointment, for two years you may not work as a Federal employee on any matter on which you provided lobbying services or on any matter within the specific issue area on which you lobbied.

Exceptions. Authorization to participate in a matter in which one of these persons or entities is a party (or represents a party) may be granted if ITA’s need for your participation outweighs appearance concerns. To seek such an authorization, contact the Ethics Law and Programs Division at 202-482-5384.

GIFTS, BRIBES, AND SALARY SUPPLEMENTATION

Bribes and Salary Supplementation. As a U.S. Government employee, you may not solicit or receive anything of value for taking action or failing to take action in your Government position. You also may not accept payment for performing your Government duties from a source other than the United States Government.

Personal Gifts. Generally, you may not accept a gift from someone that has (or is seeking) a contract, grant, or other business with the Department of Commerce; is regulated by Commerce; or has interests that may be affected by performance of your Government duties or a gift that is given to you because of your ITA position. Gifts to your spouse or minor children are considered gifts to you in most circumstances.

However, *exceptions* allow you to accept:

- items of little intrinsic value (cards, plaques, trophies);
- gifts of US\$20 or less (other than cash) (up to US\$50 per year from the same donor);*
- gifts from relatives or friends (if based on a personal relationship);
- invitations to widely-attended events (if from the host (generally) and if your supervisor approves your attendance as being in ITA's interest and as outweighing any appearance concern);*
- business meals overseas, if a foreign citizen or representative of a foreign entity is present (up to the *per diem* for the city);*
- discounts available to a broad range of persons;
- awards and honorary degrees (in specified circumstances);*
- meals, lodging, transportation, and other benefits based on an outside business or employment relationship;* and
- gifts from a foreign government of US\$335 or less; gifts of over US\$335 may be accepted, but become property of the United States Government.

** this exception does not apply if you are a political appointee and the gift is from a lobbyist or lobbying organization other than a 501(c)(3) organization or a media company*

If a gift may not be accepted for personal use, but its refusal would cause offense or embarrassment, you should consider accepting it as a gift to ITA, if it would further an agency mission and not create an appearance of loss of impartiality. (See below for guidance on gifts to the U.S. Government.)

Gifts between Employees. In general, you may not offer a gift to a supervisor or accept a gift from a subordinate. However, *exceptions* permit you to offer or accept:

- a gift for a special occasion (such as a child's birth, a retirement, or a wedding);
- items of US\$10 or less, given occasionally;
- food shared in the office;
- personal hospitality at one's home; and
- a gift to a host or hostess.

Gifts to the U.S. Government. All Government agencies may accept (but not solicit) travel payments for employees to attend meetings and similar functions. In addition, the Department of Commerce may accept donations to support agency activities, if acceptance would not create an appearance of impropriety. Honoraria may not be accepted and, except in rare cases, gifts from ITA grantees and contractors may not be accepted.

You may solicit gifts that would support an agency mission, except that you may not solicit a travel gift for travel by a Federal employee. You should not solicit a gift from an ITA contractor or grantee or from anyone with interests in controversial matters before ITA. Solicitations should be non-preferential, so they should be broad-based, such as to an organization representing a large number of companies in an industry sector or geographic area. Donors may not be promised access to Government officials or information as benefits for making donations. A gift of more than US\$35,000 in value must be approved by the Secretary.

ITA gifts should be reported on a form CD-210 and, if it is a travel gift, a form SF 326.

Gifts from a Foreign Government. You may accept a gift from a foreign government if it cannot be graciously declined. "Foreign government" for these purposes includes international organizations composed of national governments, such as the United Nations. If a gift from a foreign government is valued at US\$335 or less, you may retain it as a personal gift for personal use. If it is valued at more than US\$335, you may accept it as a gift to the Department, even if it does not support an agency activity.

Gifts from foreign governments should be reported on a form CD-342, Record of Gifts and Decorations from Foreign Governments. Meals in a commercial establishment should be reported on this form, but not meals at an embassy. Report a travel gift from a foreign government on a CD-342 if all travel takes place outside the United States; otherwise, on a CD-210 and a SF 326 (the same forms used for other travel gifts).

NON-GOVERNMENT ACTIVITIES

Non-Government Employment. You may not engage in outside employment or other personal activity that conflicts with your Commercial Service position, including employment that requires disqualification from a significant part of your Government duties or an activity that creates an appearance of using your public office for private gain. You must disqualify yourself from participating in a matter as a Federal employee if it will affect the financial interests of an outside employer or if an organization in which you are an active participant is a party or is representing a party in the matter.

Special Rules for Employees Overseas. If you are a *U.S. citizen employee* working overseas, you, your spouse, and family may not, in your country of assignment:

- speculate in currency exchange;
- engage in transactions at exchange rates differing from local legally-available rates, unless authorized in advance by the Chief of Mission;
- engage in sales to unauthorized persons of currency acquired at preferential rates through diplomatic or other restricted arrangements;
- engage in transactions using a diplomatic pouch or official mail, if not approved;
- transfer blocked funds in violation of U.S. foreign funds and asset controls;
- engage in independent and unsanctioned private transactions that involve you as an individual in violation of applicable foreign currency control regulations; or
- act as an intermediary in the transfer of private funds from persons in one country to persons in another country, including the United States, except as authorized as part of your official duties.

Furthermore, if you are a *U.S. citizen employee* working overseas (and were not locally-hired), you may not, in your country of assignment:

- work for compensation; or
 - transact or have an interest in any business; and
- your spouse or a family member may not, in any foreign country:
- engage in outside employment or undertake an outside activity that:
 - would violate any law of the country;
 - would require a waiver of diplomatic immunity deemed unacceptably broad by the Chief of Mission; or
 - could otherwise damage the interests of the United States, as determined

by the Chief of Mission of that country.

If you are *locally employed staff overseas* (employees who are not U.S. citizens or are U.S. citizens hired overseas), you must receive approval from the Chief of Mission before accepting any outside employment. Approval will be granted unless the activity would violate any law of the country or could damage the interests of the United States.

Exceptions to Limits on Overseas Employment. Even if you are a U.S. citizen employee, you or your spouse or family member may accept employment that takes place solely within the U.S. embassy community. You also may receive compensation for teaching, but only if it is for an extension program of an accredited U.S. degree-granting institution or for a private foreign university that is not state-supported.

Sale of Personal Property. If you are a U.S. citizen, you and your spouse and family members may not sell or dispose of personal property that was imported into or purchased from a foreign country if it was exempt by virtue of your Government position from import limitations, customs duties, or taxes that would otherwise apply, unless authorized by the Chief of Mission and applicable regulations.

Service with Private Organizations. You must receive approval from both the Chief of Mission and the Assistant General Counsel for Administration for you or your spouse or a family member to serve as an officer, director, or trustee of a private organization in a private capacity overseas. You also should seek guidance from the Ethics Law and Programs Division regarding serving in an official capacity with an outside organization; official service as a board member or officer is barred in most cases. Fund-raising for a private organization in an official capacity is permitted in some circumstances, with the approval of the Chief of Mission, if it will advance U.S. foreign policy interests. You should seek further advice before engaging in such fund-raising.

Working for a Foreign Government. If you are a U.S. citizen, you may not work for, or receive payments from, a foreign government, unless authorized by statute.

CONTACTING THE U.S. GOVERNMENT ON BEHALF OF OTHERS

Basic Restrictions on Contacting the U.S. Government on Behalf of Others.

Generally, you may not serve as an agent or attorney or, if paid, otherwise represent anyone before a United States Government agency or court. For purposes of this restriction, representation includes any contact, whether by telephone, by e-mail, in writing, or in person, that is made with the purpose of influencing U.S. Government action. Requests for publicly-available information are not barred, nor are factual responses to Government requests for information.

Exceptions. As provided in statutory exceptions, you may represent:

- your spouse, child, parent, or an estate (if you receive prior approval through the Ethics Law and Programs Division);
- a Federal employee in a personnel dispute (if you receive no compensation and if it is not incompatible with your Government position); and
- an organization composed primarily of Federal employees or their spouses or dependents (if you receive no compensation and if the matter does not involve claims against the Government, proceedings in which the organization is a party, or Government financial benefits to the organization).

Receiving Compensation based on the Lobbying Activities of Others. In addition to being barred from lobbying the United States Government, you are also barred from receiving any payment that is based on representational activities of others before a Federal agency or Federal court during a period in which you serve or served as a Federal employee.

POLITICAL ACTIVITIES

General Restrictions concerning Engaging in Political Activities. If you are a U.S. citizen, you may actively engage in political activities relating to a U.S. Government campaign, when not on duty and not on Government premises, but you may not:

- engage in partisan political activities while on U.S. Government premises
- engage in partisan political activities while on official duty
- use the authority of your U.S. Government position for political purposes;
- use agency resources in connection with partisan political activities, such as by sending a political e-mail from your office computer;
- accept or receive a political contribution;
- personally solicit political contributions or host a political fund-raiser (except that for a union's multi-candidate political committee in some circumstances); or
- run as a candidate in a partisan election (except in certain designated areas).
- solicit or accept volunteer services from a subordinate.

Permissible Activities. Unless you are a career member of the SES, you may:

- assist in the management of a U.S. election campaign, such as by soliciting votes (but not funds), stuffing envelopes, and organizing campaign events and
- serve as an officer in a U.S. political organization.

Special Rules for Career SES Members. If you are a career member of the Senior Executive Service, you may not actively assist in the conduct of a partisan campaign or serve as an officer in a political organization, even during non-duty hours. These restrictions do not apply to Senior Foreign Service members. However, during non-duty hours you may actively participate in nonpartisan elections and non-candidate campaigns, such as for referenda. Regarding partisan candidate campaigns, you may vote, make contributions, sign nominating petitions, and engage in similar activities.

Restrictions on Activities Overseas. If you are a U.S. citizen employee serving overseas, you may not actively participate in a foreign electoral campaign; however, you may participate in U.S. campaign activities within the restrictions identified above. If you are not a U.S. citizen, you may actively participate overseas in political activities of your country of citizenship when off duty and when off U.S. Government premises

MISUSE OF GOVERNMENT POSITION AND RESOURCES

Use of U.S. Government Resources. You may use U.S. Government resources only for authorized Government activities. Such resources include Government equipment, supplies, services, and the time of Government personnel. You may not use information you receive in the course of your employment for personal purposes, unless the information is also available to the public. However, you may use frequent flier miles you earned from Government travel for personal purposes, including personal travel or upgrades for official travel.

Rule on the Use of the Internet and E-mail. You may use access to e-mail and to the Internet for personal activities if such use does not interfere with the business of your office and is not prohibited by your agency, *provided that* you do not use access for:

- the pursuit of private commercial business activities or profit-making ventures;
- partisan political activities;
- prohibited lobbying activities;
- uses that result in additional charges to the Government;
- engaging in prohibited discriminatory conduct;
- obtaining or viewing sexually explicit material;
- any activity that would bring discredit on the Department; or
- any violation of a statute or regulation.

If you serve in the United States, you may use office printers for personal Internet and e-mail uses, provided it does not consume excessive resources. If you serve overseas, you should follow the rules set forth by the Chief of Mission regarding the use of Government services, equipment, and supplies, which may vary from the rules applicable to employees serving in offices in the United States.

Use of U.S. Government Position. You may not use your U.S. Government authority, including business contacts obtained through employment, for personal activities. In addition, you may not use your Government title in connection with a non-Government activity, except as part of general biographical data if it is given no more prominence than other significant biographical details. If you are a political appointee, you are required by an Ethics Pledge you signed to make hiring and employment decisions based on the candidate's qualifications, competence, and experience.

SEEKING EMPLOYMENT AND POST-EMPLOYMENT ACTIVITIES

Seeking Employment. Once you begin to seek non-Federal employment, you must disqualify yourself from working as an ITA employee on any matter in which a prospective employer has a financial interest. Such disqualification must continue until employment discussions end or until two months have passed since you submitted an unsolicited résumé to which you received no response. If you are working on a procurement of over US\$100,000, you must notify your supervisor and the Ethics Law and Programs Division, in writing, of contacts with or from a competing contractor.

Post-Employment Restrictions. After you leave Federal service, you may not:

- contact a U.S. Government agency or court concerning a specific-party matter on which you worked;
- for two years, contact a U.S. Government agency or court on a specific-party matter on which a subordinate of yours worked or which was otherwise under your responsibility during your last year of service with ITA;
- for one year if you are a senior career employee or two years if you are a senior political appointee (have an annual base pay of \$153,105 or more), contact ITA (or the entire Department of Commerce if you are a Presidential appointee);
- for one year, if you are a senior employee, advise (or represent before the U.S. Government) a non-U.S. government or political party;
- disclose or use protected nonpublic Federal information, such as treaty negotiation information, private personnel information, trade secrets or proprietary business information, and national security information; or
- for one year, accept compensation the contractor of a \$10,000,000 or more procurement, if you served as a procurement official or program manager; or
- if you are a political appointee, for the remainder of the U.S. President's Administration, lobby any political appointee in the Executive Branch.

Exceptions and Special Post-Employment Rules. There are exceptions to some post-employment rules regarding testimony under oath and representing state and local governments, international organizations, educational institutions, and medical institutions. There are also special rules applicable to attorneys. Contact the Ethics Law and Programs Division at 202-482-5384 for a handout providing a more thorough description of post-employment restrictions and exceptions or for guidance.

FINANCIAL DISCLOSURE

Guidelines for Filing a Financial Disclosure Report. If you serve in a position in which you may work on matters that are likely to have a substantial impact on the financial interests of members of the public, you may be designated as being required to file a financial disclosure report. Such reports are due when you are appointed to such a position and annually thereafter. The information requested on such forms—financial investments, liabilities, gifts, non-Federal positions, and arrangements with past and future employers—is information relevant to the ethics rules discussed in this handout. Ethics officials review the reports in order to identify potential conflicts of interest and to advise you on means to resolve any problem. For this system to work effectively, you must file your report in a timely manner and you must list all information requested as completely and clearly as possible.

Specific Guidance. When filling out your report, please:

- sign and date the report;
- if reporting an IRA or 401(k) plan, identify the specific holdings in the account;
- do not list as a gift payments for Government travel—these are gifts to the Government and should be reported on a Form CD 210 and a Form SF 326; and
- if listing an investment in, or position with, a closely-held company or a partnership, identify the nature of the business of the company or partnership and its location (city and state).

Remember that this information is used to provide advice to you, so the information you include on your report must be specific and complete in order to be useful.

**For further advice on ethics rules, contact the
Ethics Law and Programs Division
of the Assistant General Counsel for Administration,
U.S. Department of Commerce, at
202-482-5384 or ethicsdivision@doc.gov.**

CITATIONS TO APPLICABLE LAW

Financial Conflicts of Interest

18 United States Code (U.S.C.) § 208
5 Code of Federal Regulations (C.F.R.) §§ 2635.401-2635.403, 2635.502, 2640.201,
and 2640.202
3 Foreign Affairs Manual (FAM) Part 4120
Executive Order 13490, dated January 21, 2009

Appearances of Bias based on Outside Relationships

5 C.F.R. §§ 2635.501-2635.503
Executive Order 13490, dated January 21, 2009

Gifts, Bribes, and Salary Supplementation

5 U.S.C. §§ 7342, 7351, and 7353; 15 U.S.C. § 1522; 18 U.S.C. §§ 201 and 209
5 C.F.R. §§ 2635.201-2635.205, 2635.301-2635-304; 41 C.F.R. Part 304-1

Outside Activities (including Lobbying the Government)

5 U.S.C. §§ 7321-7326; 18 U.S.C. §§ 203, 205, and 208
5 C.F.R. §§ 734.201-734.702; 2635.801-2635.809
3 FAM Part 4120

Misuse of Government Position and Resources

18 U.S.C. § 641
5 C.F.R. §§ 2635.701-2635.705
Department of Commerce Internet Use Policy

Seeking Employment and Post-Employment Restrictions

18 U.S.C. §§ 207 and 208; 41 U.S.C. § 423
5 C.F.R. Parts 2635, 2637, and 2641; 15 C.F.R. §§ 15.11-15.18; 37 C.F.R. Part 10
Executive Order 13490, dated January 21, 2009

EXAMPLES

NO PROBLEM

1. A Commercial Officer stationed overseas assists an American company in which she has US\$18,000 in stock, which is covered by a conflict of interest waiver the employee obtained.
2. A Commercial Service employee works on a regulation affecting the U.S. oil and gas industry, including companies in which a broadly-diversified mutual fund in which he has US\$75,000 in holdings invests.
3. An ITA employee works on a project involving a company that she worked for three years ago.
4. A Senior Commercial Service officer overseas teaches a course, for pay, at an extension program of a U.S. college.
5. A foreign service national distributes flyers during non-duty hours for a candidate in a local election in an overseas post.
6. A U.S. citizen employee stationed overseas purchases property for her residence in her country of assignment.

PROBLEM

1. A Commercial Officer stationed overseas assists an American company in which she has US\$18,000 in stock, for which the employee did not receive a conflict of interest waiver.
2. A Commercial Service employee works on a regulation affecting the U.S. oil and gas industry, including companies in which a sector-specific energy mutual fund in which he has US\$75,000 in holdings invests.
3. An ITA employee works on a project involving a company that she worked for three months ago.
4. A Senior Commercial Service officer overseas teaches a course, for pay, at a foreign state-supported college.
5. A U.S. citizen employee distributes flyers during non-duty hours for a candidate in a local election in an overseas post.
6. A U.S. citizen employee stationed overseas purchases property for investment purposes in her country of assignment.

EXAMPLES

NO PROBLEM

7. An employee writes a letter of recommendation regarding a former employee using ITA stationery.
8. An employee who is not a U.S. citizen actively works during non-duty hours on a local political campaign at her home.
9. A career ITA employee is treated to US\$100 meal in a foreign city for which the *per diem* rate is US\$150 at which both United States and local business persons are present.
10. An employee who is asked to travel to speak at a conference explains to the conference organizer that she would be happy to participate, but that her office does not have the travel funds necessary for her to participate in the conference.
11. After leaving Federal service, a former GS-13 Commercial Service officer lobbies ITA on a general policy on which she worked while with the Federal Government.

PROBLEM

7. An employee writes a letter of recommendation regarding a neighbor using U.S. Government stationery.
8. An employee who is not a U.S. citizen actively works during non-duty hours on a local political campaign at her Government office.
9. A career ITA employee is treated to US\$100 meal in a foreign city for which the *per diem* rate is US\$150 at which only United States business persons are present.
10. An employee who is asked to travel to speak at a conference explains to the conference organizer that she would be happy to participate, but that her office does not have the travel funds necessary for her to participate in the conference; she then asks the organizer to pay for the travel.
11. After leaving Federal service, a former GS-13 Commercial Service officer lobbies ITA on a matter involving specific parties on which she worked while with the Federal Government.

Prepared by the Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, U.S. Department of Commerce – March 4, 2009